

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS**

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DARNELL E. WILLIAMS and YESSANIA M.  
TAVERAS,

Plaintiffs,

v.

ELISABETH DEVOS in her official capacity as  
Secretary of the United States Department of  
Education,

Defendant.

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Civil Action No. 16-11949-LTS

**MOTION BY THE COMMONWEALTH OF MASSACHUSETTS  
TO COMPEL COMPLIANCE WITH THIS COURT'S ORDER OR,  
IN THE ALTERNATIVE, TO INTERVENE**

The Commonwealth of Massachusetts (the "Commonwealth"), by and through the Office of Attorney General Maura Healey, respectfully moves to compel compliance with the Court's Order in this matter, Dkt. No. 99 (the "Order"), pursuant to Federal Rules of Civil Procedure 71, or, in the alternative, to intervene pursuant to Federal Rules Civil Procedure 24 as a plaintiff-intervenor in this action.

The motion to compel compliance pursuant to Rule 71 should be granted because the Secretary of Education (the "Secretary") refuses to comply with the Order that the letter from Attorney General Healey to the Secretary dated November 30, 2015 regarding Corinthian College, Inc. ("the DTR") invoked a borrower defense proceeding on behalf of the borrowers listed in Exhibit 4 to the DTR. The Order's Conclusion was straightforward:

the Court determines that the DTR invoked a borrower defense proceeding on behalf of the people listed on Exhibit 4, including Williams and Taveras; that such

a request was within Attorney General Healey's authority to make; that such a request was not precluded by federal regulations, even in the absence of an attachment of a personal request emanating from each individual borrower; and that certification, without consideration of Attorney General Healey's DTR submission, was arbitrary and capricious.

Dkt. No. 99 at 29.

Nevertheless, and contrary to the Order, the Secretary continues to maintain that the DTR has not invoked a borrower defense proceeding on behalf of the people listed in Exhibit 4, other than the two named Plaintiffs. A motion to enforce pursuant to Rule 71 is appropriate because the Commonwealth is a non-party granted relief in the Order and the Secretary is not in compliance with the Order. *See* Fed. R. Civ. P. 71. The Attorney General is the chief law enforcer in the Commonwealth and has an important interest in having her authority to invoke borrower defenses on behalf of defrauded Massachusetts students vindicated.

In the alternative, intervention is warranted as of right because the motion was brought timely after the Commonwealth learned that the Secretary was not in compliance with the Order and governing law as declared by the Court and because of important interests described above. *See* Fed. R. Civ. P. 24(a)(2). Finally, even if the Court finds that intervention is not warranted as of right, it should grant the Commonwealth permissive leave to intervene because its claims share common questions of law and fact with Plaintiffs' complaint. *See* Fed. R. Civ. P. 24(b)(1)(B).

Pursuant to Local Rule 7.1(b)(1), the grounds for the Commonwealth's motion are set forth with specificity in the memorandum of law filed herewith.

WHEREFORE, the Commonwealth of Massachusetts respectfully request that the Court grant its motion to enforce compliance with the Court's Order, on the alternative, its motion to intervene.

### **REQUEST FOR ORAL ARGUMENT**

The Commonwealth believes that oral argument may assist the Court and accordingly requests a hearing on the motion.

### **LOCAL RULE 7.1(A)(2) CERTIFICATION**

The undersigned counsel for the Commonwealth certifies that he has conferred by telephone with counsel for Plaintiffs on February 22, 2019, and Defendant on February 25, 2019 to resolve or narrow the issue addressed in this motion. Plaintiffs assent to the Commonwealth's motion. Defendant notified the Commonwealth on February 26, 2019, that she opposes the Commonwealth's motion.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS  
ATTORNEY GENERAL MAURA HEALEY

/s/ Timothy S. Hoitink

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Dated: February 26, 2019

**CERTIFICATE OF SERVICE**

I, Timothy S. Hoitink, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants by First Class Mail.

Dated: February 26, 2019

/s/ Timothy S. Hoitink  
Timothy Hoitink